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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
	)	

COMMENTS OF
GUYANA TELEPHONE & TELEGRAPH LTD.

Guyana Telephone & Telegraph Ltd. ("GT&T"), by its attorneys, hereby submits these comments in response to the *Notice of Proposed Rulemaking* (FCC 01-132) released on April 27, 2001 in the above-captioned proceeding. GT&T is commenting only on the issue of applying a mandatory bill-and-keep regime to international switched traffic. *Notice* at ¶¶ 125-26. GT&T is the incumbent telecommunications carrier in the developing country of Guyana, and it currently receives net settlement payments from carriers in the U.S. and other countries for foreign-billed international switched calls. As a result, GT&T is directly interested in the intercarrier compensation regime applicable to international switched telephone calls. In GT&T's view, the Commission should not adopt such a regime for U.S. carriers because it would be ineffective, contrary to U.S. international commitments, and unlawful under the Communications Act.

First, it is not feasible for the Commission to implement a mandatory bill-and-keep regime unless it exercises direct authority over both interconnecting carriers. Without such authority, the Commission could not require both carriers to enter into an interconnection arrangement or otherwise ensure that the terminating carrier terminates the traffic of the originating carrier. As regards international traffic, the Commission, by its own admission, lacks direct authority over the foreign carrier. *In the Matter of International Settlement Rates,* 12 FCC

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Rcd 19,806 at ¶ 215 (1997) *("Benchmarks Order").* **As** a result, the Commission could not prevent numerous foreign carriers from nullifying a mandatory bill-and-keep regime by terminating direct relations with U.S. carriers, thereby forcing U.S.-outbound traffic to be routed through third countries and ensuring that the terminating foreign carriers continued receiving intercarrier compensation for U.S.-billed international calls. In GT&T's view, that is precisely what would occur on many routes were the Commission to attempt to mandate a bill-and-keep regime for international telephony. The result would be severe industry disruption, as well as the waste of scarce resources as U.S. and foreign carriers migrated large traffic volumes from direct to third-country routing configurations. This result would not promote the U.S. public interest, and therefore the Commission should not seek to implement a mandatory bill-and-keep regime for international traffic.

Second, a mandatory bill-and-keep regime for international traffic would be contrary to two different sets of U.S. treaty commitments. Articles 1.5 and 6.2 of the International Telecommunications Union treaty states that U.S. and foreign carriers shall "establish and revise accounting rates" pursuant to "mutual agreement." *See* ITU Regulations, Art. §§ 1.5 & 6.2. It is contrary to this scheme for the Commission to deprive foreign carriers of compensation for terminating U.S.-billed calls through the imposition of a bill-and-keep regime. While the Commission's authority to depart from these aspects of the ITU treaty regime was upheld in *Cable & Wirelessplc. v. FCC*, 166 F.3d 1224. 1230 (D.C. Cir. 1999) ("*C&W*"), GT&T urges the Commission to abide by that regime here in the interests of international comity.

Further, a mandatory bill-and-keep regime for international telephony (and, indeed, for domestic telephony as well) would be inconsistent with the United States' commitments pursuant to the World Trade Organization (WTO) Basic Telecommunications Agreement. The WTO

Reference Paper provides in Section 2.2(b) that "interconnection" must occur at "cost-oriented" rates that are "transparent" and "reasonable." The only exception taken by the United States from this obligation relates to rural local exchange carriers. Assuming that a terminating carrier incurs costs to terminate traffic, the requirement of a "cost-oriented rate" is not satisfied by an interconnection rate of $0 pursuant to a mandatory bill-and-keep regime.

Third, a mandatory bill-and-keep regime for international traffic is unreasoned decision-making and contrary to Section 201(b).[1] 47 U.S.C. § 201(b). Section 201(b) states that the "charges, practices, classifications, and regulations" of U.S. carriers may not be "unjust" or "unreasonable." GT&T submits that this provision prohibits the unilateral imposition of bill-and-keep for international telephony. In its decision on the Commission's benchmark settlement rate policies, the Court upheld those policies based on "the absence of record evidence showing that the benchmark rates *systematically* undercompensate foreign carriers." *C&W*, 166 F.3d at 1233 (emphasis in original). No further record evidence is necessary to show that a mandatory rate of $0 would systematically undercompensate foreign carriers which incur costs to terminate U.S.-billed traffic.

It is no answer to suggest that a foreign carrier can recover its termination costs from its own subscribers. In GT&T's case, its subscribers are overwhelmingly poor and lack the financial ability to pay the costs GT&T incurs to terminate U.S.-billed traffic. At the time the Commission adopted its benchmark settlement rate rules, Guyana and 63 other countries qualified as low-income countries because their per capita Gross National Product was less than $726. *See Benchmarks Order,* Appendix C. In these circumstances, it is unreasonable to expect the foreign carriers to identify some class of subscribers in their own countries who are willing and able to pay the costs of terminating U.S.-billed telephone calls.

Similarly, a bill-and-keep regime is unreasonable because it would prevent a foreign country from using settlement payments to support universal service. Although the United States has decided to stop using intercarrier compensation as a universal service support mechanism, *see* 47 U.S.C. § 254(e), other countries prefer for some period of time to continue following the traditional (and historic U.S.) approach of funding universal service through intercarrier payments. Under-developed countries, like Guyana, are especially dependent upon intercarrier compensation to support universal service because they cannot obtain the necessary support from subscribers. See, *e.g.*, Petition for Waiver of the Benchmark Settlement Rate for Guyana, IB Docket No.96-261, filed July 6, 2001. **As** a result, while bill-and-keep may not threaten universal service in the United States, such a regime is unreasonable as applied to international traffic because it would systematically undermine universal service in many other countries.

(...continued)

[1] In the event the Commission or a court determines that a mandatory bill-and-keep regime is contrary to the Communications Act for domestic telephony, the same conclusion applies for international calls. GT&T will not repeat those arguments here, but rather incorporate them by reference.

For the foregoing reasons, GT&T submits that the Commission should not adopt a mandatory bill-and-keep regime for international switched telephony.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Beatriz Viera-Zaloom, hereby certify this 21st day of August, 2001, that copies of Guyana Telephone & Telegraph Ltd. Comments in CC Docket No. 01-92 were served by hand upon the following:

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